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1722 EYE STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711

HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO

FOUNDED 1866

WRITER'S DIRECT NUMBER
(202) 736-8088

WRITER'S E-MAIL ADDRESS
dlawson@sidley.com

December 21, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Federal Communications Commission
224 12th Street, SW
TW-B204
Washington, DC 20554

Re: Review of Commission Consideration of Applications under the Cable
Landing License Act (IB Docket No. 00-106) /

Dear Ms. Salas:

On December 20, 2000, Professor Robert Willig, of Princeton University, Charles Meyers, a business consultant to Concert, Lawrence Lafaro, John Reilly, Douglas Schoenberger and James Talbot, of AT&T, and C. Frederick Beckner III and the undersigned, counsel to AT&T, met with Cathy Hsu, Elizabeth Nightingale, Jackie Ruff, Marilyn Simon, and Douglas Webbink, of the International Bureau.

Professor Willig summarized the economic testimony that he had previously filed in this proceeding. Professor Willig explained that new submarine cable capacity is presumptively pro-competitive and that, by any standard economic measurement, the submarine cable industry is flourishing. He also explained that entry regulation imposes significant costs. Thus, Professor Willig explained, proponents of entry regulation bear a heavy burden to identify with precision market failures that justify regulatory intervention.

Professor Willig also addressed claims by Global Crossing that U.S. carriers are forced anticompetitively to "cluster" onto open investment cables. Professor Willig explained that Global Crossing's theories ignore Commission precedent, marketplace realities and fundamental principles of competition analysis.

Finally, Professor Willig discussed the three specific streamlining options proposed in the Notice of Proposed Rulemaking in this proceeding. Professor Willig explained that the proposed options fail to recognize that the markets are regional and that they presume – incorrectly – that the individual owners on open investment cables do not compete with each other. Professor Willig also showed that Global Crossing's "35 percent" proposal is

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fundamentally flawed because it was premised on the counterfactual claims that the U.S. backhaul market is not competitive and that U.S. backhaul providers collude.

Mr. Meyers summarized the substantial evidence in the record demonstrating that the relevant markets are regional and that there is vigorous competition in each region. He further summarized the prior Commission orders that utilized a regional market approach and that made express factual findings that cable landing stations and operating agreements are not bottlenecks. Finally, Mr. Meyers discussed two charts detailing existing and planned private cables in the three regions and private cables serving the "top 12" destinations for U.S. originated voice calls. Copies of the materials distributed by Mr. Meyers are attached to this letter.¹

Yours truly,


David Lawson

Attachments

cc: Cathy Hsu
Elizabeth Nightingale
Jackie Ruff
Marilyn Simon
Douglas Webbink

¹ The attached chart showing private cables by region includes two private cables not listed on the chart handed out the December 20 meeting: the Tycom Atlantic cable (serving the Atlantic region) and the Bahamas Internet cable (serving the Americas region). In addition, the original chart incorrectly identified the "South Atlantic Crossing" cable as the "Southern Atlantic Crossing" cable and the "Atlantica" cable as the "Atlantic" cable. These changes are reflected on the revised chart.

FCC FINDINGS THAT THE MARKETS ARE REGIONAL

- “[C]arriers have been successful in providing international services through alternative arrangements such as switched hubbing through third countries.” *AT&T-BT JV Order* ¶ 50.
- “[T]here are thousands of routes to the 240 countries of the world. In addition . . . there is no dearth of capacity on most transit routes and . . . there are no barriers to firms with excess capacity to provide transit services.” *AT&T-BT JV Order* ¶ 75.
- “[W]e conclude that it is appropriate here to adopt a regional approach to analyzing the international transport. With regard to U.S. international submarine cables, we find that, although they terminate in a select number of countries, they tend to serve entire regions. For example, the TAT-12/13 cable system terminates in the United Kingdom and France, but carriers use this cable system to carry traffic destined for points throughout Europe. We find here it is appropriate to aggregate international transport where point-to-point markets have competitive characteristics that are sufficiently similar to other point-to-point markets. Generally, U.S. submarine cables serve three regions: Atlantic, Pacific, and Caribbean/Latin America. We find, moreover, that several cable systems may provide transport capacity to the same geographic region. If, for some reason, one cable route to a particular destination is foreclosed, carriers generally can route their traffic to that destination using other cables serving the same region.” *MCI-WorldCom Merger Order* ¶ 84.
- “Because 52 countries committed to granting market access for international services, alternative routing options will almost always be available.” *Foreign Participation Order* ¶ 94.

FCC FINDINGS THAT LANDING STATIONS ARE NOT BOTTLENECKS

- “Although AT&T owns a majority of U.S. cable landing stations, AT&T does not have market power in this market.” *AT&T-BT JV Order* ¶ 100. *See also id.* (rejecting the claim advanced by Sprint that AT&T had “bottleneck control over cable landing stations in the U.S.” and could use its “position as a cable station owner to benefit itself at the expense” of the carriers landing traffic at stations it owned).
- “The record lacks any evidence to demonstrate that the combined entity, either unilaterally or in concert with others, would have the ability to exercise market power in the U.S. backhaul market. Even if the combined entity were to attempt to raise prices, however, it would lack the ability to restrict customers from obtaining new sources of supply.” *MCI-WorldCom Merger Order* ¶ 115.
- Observing that merger opponents offered no evidence or theory that would even purport to show that “either BT or MCI possesses or exercises market power in any U.S. input

market” or could “obtain market power in any such input market.” *BT-MCI Merger Order* ¶ 163 n.224.

- “[A]ny of the submarine cable’s owners . . . who are dissatisfied with the cable landing station’s operations are free to raise their complaints in accord with the process established by each submarine cable’s [C&MA], the basic ownership agreement. . . . For these reasons, the Commission concluded in its 1996 *Order*, and we affirm now, that disputes over ‘contractual arrangements,’ such as access to and restoration of cable facilities, do not warrant continued classification as AT&T as dominant for IMTS.” *AT&T Int’l Non-Dominance Recon. Order* ¶ 26.

FCC FINDINGS THAT OPERATING AGREEMENTS ARE NOT BOTTLENECKS

- “[W]e conclude that the JV’s competitors have the ability to obtain operating agreements from foreign carriers. As we have noted previously, carriers are generally able to obtain operating agreements to terminate traffic or use alternative arrangements to provide international services. Furthermore, as countries implement their market access commitments made as part of the WTO Basic Telecom Agreement, U.S. carriers will be able to obtain operating agreements from new entrants as well as incumbents in these countries.” *AT&T-BT JV Order* ¶ 50.
- “Generally, U.S. carriers are able to obtain operating agreements or establish alternative arrangements to provide international services.” *MCI-WorldCom Merger Order* ¶ 117.
- “We find that the increasing availability of both multiple operating agreements and of alternative means for U.S. facilities-based carriers to route their traffic supports a finding to reclassify AT&T as non-dominant” *AT&T Int’l Non-Dominance Order* ¶ 51.

PRIVATE CABLES TO TOP 12 TRAFFIC DESTINATIONS

- | | |
|---|--|
| 1. Canada <ul style="list-style-type: none">• CANUS• FLAG Pacific• 360atlantic | 6. India <ul style="list-style-type: none">• 360pacific• FLAG |
| 2. Mexico <ul style="list-style-type: none">• ARCOS-1• PAC | 7. Hong Kong <ul style="list-style-type: none">• 360pacific |
| 3. UK <ul style="list-style-type: none">• Yellow/AC-2• FLAG Atlantic• AC-1• 360atlantic• Gemini• PTAT | 8. Brazil <ul style="list-style-type: none">• SAC• Atlantica• SAM-1 |
| 4. Germany <ul style="list-style-type: none">• AC-1 | 9. France <ul style="list-style-type: none">• FLAG Atlantic• FLAG |
| 5. Japan <ul style="list-style-type: none">• 360pacific• FLAG Pacific• Tycom Pacific• PC-1• NPC | 10. Philippines <ul style="list-style-type: none">• 360pacific |
| | 11. Italy <ul style="list-style-type: none">• FLAG |
| | 12. Australia <ul style="list-style-type: none">• Southern Cross |

PRIVATE CABLES BY REGION

Atlantic

- Atlantic Crossing (Global Crossing)
- CANUS (Teleglobe)
- PTAT (Sprint)
- Gemini (WorldCom)
- 360atlantic (Worldwide Fiber Holdings)
- FLAG Atlantic (FLAG Telecom, GTS TransAtlantic)
- Yellow/AC-2 - Level 3, Viatel, Global Crossing)
- Tycom Atlantic (Tyco)

Pacific

- PC-1 (Global Crossing)
- Southern Cross (WorldCom)
- 360pacific (Worldwide Fiber Holdings, Leducor)
- FLAG Pacific (FLAG Telecom)
- Tycom Pacific (Tyco)

Americas

- South American Crossing (Global Crossing)
- Pan American Crossing (Global Crossing)
- ARCOS-1 (Inversiones Jaafe, Sun Financial)
- Atlantica (GlobeNet)
- Bahamas Internet (Caribbean Crossings)